

SENATE BILL No. 578

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4; IC 4-12.5; IC 4-13.5-1-2.5; IC 5-1-16-2.5; IC 5-20-1-2.5; IC 5-21-4-2.5; IC 5-28-27; IC 8-1-33; IC 8-9.5-8-2.5; IC 8-10; IC 14-13-1-30.5; IC 14-14-1-7.5; IC 15-1.5-9-2.5; IC 20-12-63-4.5.

Synopsis: State bonding entities and broadband development. Establishes the finance authority (the authority). Provides that the board of the authority shall serve as the governing body for certain bond issuing entities or shall review and approve financings by certain other bond issuing entities. Provides that certain laws concerning the organization and operation of existing bond issuing entities are superseded when the board of the authority is serving as the governing body of a bond issuing entity. Authorizes the authority to issue bonds and notes. Establishes a broadband development program to be administered by the broadband development authority and authorizes the development finance authority to issue bonds and notes and lend proceeds to the broadband development authority for the purpose of expanding broadband infrastructure services to residential, commercial, public, and nonprofit customers. Legalizes bonds, notes, contracts, and obligations previously issued or entered into by certain bonding entities.

Effective: Upon passage.

Hershman

January 20, 2005, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 578

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-10.9-2.1 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. "Broadband development**
4 **authority" refers to the Indiana broadband development authority**
5 **established by IC 8-1-33-12.**

6 SECTION 2. IC 4-4-10.9-2.2 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 2.2. "Broadband development**
9 **project" means a project authorized by the broadband**
10 **development authority under IC 8-1-33.**

11 SECTION 3. IC 4-4-10.9-11 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as
13 provided in subsection (b), "industrial development project" includes:
14 (1) the acquisition of land, site improvements, infrastructure
15 improvements, buildings, or structures, rehabilitation, renovation,
16 and enlargement of buildings and structures, machinery,
17 equipment, furnishings, or facilities (or any combination of these),

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comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of which serves the public purposes set forth in IC 4-4-11-2 **or IC 4-4-11-2.5;**

(2) educational facility projects; ~~and~~

(3) child care facility projects; **and**

(4) broadband development projects.

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements (including information and high technology infrastructure (as defined in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

(1) A pollution control facility.

(2) A manufacturing enterprise.

(3) A business service enterprise involved in:

(A) computer and data processing services; or

(B) commercial testing services.

(4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of robotic and flexible automation equipment.

(5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.

(6) An agricultural enterprise in which:

(A) the enterprise operates pursuant to a producer or growout agreement; and

(B) the output of the enterprise is processed predominantly in Indiana.

(7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.

(8) A recycling market development project.

(9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).

(10) A broadband development project.

SECTION 4. IC 4-4-11-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: **Sec. 1.5. (a) The board of directors of the Indiana finance authority established by IC 4-12.5-3-2 may, in accordance with IC 4-12.5-7, act as the members of the authority created by section 4 of this chapter.**

(b) When the board of directors acts as the members of the authority in accordance with IC 4-12.5-7, the following provisions are superseded:

(1) Sections 4(b), 5, 6, 7, 8, 9, 12, 14, and 15.1 of this chapter.

(2) IC 15-7-5-6.

SECTION 5. IC 4-4-11-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. The general assembly finds and declares it to be a valid public purpose of the authority to exercise its powers to assist the broadband development authority in carrying out the purposes of IC 8-1-33.**

SECTION 6. IC 4-4-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17. (a) The authority may enter into negotiations with one (1) or more persons concerning the terms and conditions of financing agreements for industrial development projects. The authority shall consider whether a proposed industrial development project may have an adverse competitive effect on similar industrial development projects already constructed or operating in the local governmental unit where the industrial development project will be located. Preliminary expenses in connection with negotiations under this section may be paid from:**

- (1) money furnished by the proposed user or developer;**
- (2) money made available by the state or federal government, or by any of their departments or agencies; or**
- (3) money of the authority, exclusive of the industrial development project guaranty fund.**

(b) The authority shall prepare a report that:

- (1) briefly describes the proposed industrial development project;**
- (2) estimates the number and expense of public works or services that would be made necessary or desirable by the proposed industrial development project, including public ways, schools, water, sewers, street lights, and fire protection;**
- (3) estimates the total costs of the proposed industrial development project;**
- (4) for an industrial development project that is not exclusively either a pollution control facility or an educational facility project, estimates the number of jobs and the payroll to be created or saved by the project;**

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(5) for pollution control facilities, describes the facilities and how they will abate, reduce, or prevent pollution;

(6) for educational facility projects, describes how the project promotes the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of the people of the state; and

(7) for child care facility projects, describes the facilities and how the facilities promote accessibility to and increased options for child care for the people of the state.

The report shall be submitted to the executive director or chairman of the plan commission, if any, having jurisdiction over the industrial development project and, if the number of new jobs estimated exceeds one hundred (100), to the superintendent of the school corporation where the industrial development project will be located. The executive director or chairman of the plan commission and the school superintendent may formulate their written comments concerning the report and transmit their comments, if any, to the authority within five (5) days from the receipt of the report.

(c) The authority shall hold a public hearing, which may be conducted by the authority, or any officer, member, or agent designated thereby, on the proposed financing agreement for the industrial development project, after giving notice by publication in one (1) newspaper of general circulation in the city, town, or county where the industrial development project is to be located at least ten (10) days in advance of this public hearing.

(d) If the authority finds that the industrial development project will be of benefit to the health, safety, morals, and general welfare of the area where the industrial development project is to be located, and complies with the purposes and provisions of this chapter, it may by resolution approve the proposed financing agreement. This resolution may also authorize the issuance of bonds payable solely from revenues and receipts derived from the financing agreement or from payments made under an agreement to guarantee obligations of the developer, a user, a related person, or the authority by a developer, a user, a related person thereto, or the authority pursuant to the industrial development project guaranty fund. The bonds are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(e) A financing agreement approved under this section must provide for payments in an amount sufficient to pay the principal of, premium, if any, and interest on the bonds authorized for the financing of the industrial development project. However, interest payments for the

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1 anticipated construction period, plus a period of not more than one (1)
 2 year, may be funded in the bond issue. The term of a financing
 3 agreement may not exceed fifty (50) years from the date of any bonds
 4 issued under the financing agreement. However, a financing agreement
 5 does not terminate after fifty (50) years if a default under that financing
 6 agreement remains uncured, unless the termination is authorized by the
 7 terms of the financing agreement. If the authority retains an interest in
 8 the industrial development project, the financing agreement must
 9 require the user or the developer to pay all costs of maintenance, repair,
 10 taxes, assessments, insurance premiums, trustee's fees, and any other
 11 expenses relating to the industrial development projects, so that the
 12 authority will not incur any expenses on account of the industrial
 13 development projects other than those that are covered by the payments
 14 provided for in the financing agreement.

15 **(f) The requirements of subsections (a) through (d) are not**
 16 **applicable to a broadband development project. The authority may**
 17 **enter into negotiations with one (1) or more persons concerning the**
 18 **terms and conditions of financing agreements for broadband**
 19 **development projects. If the authority finds that the broadband**
 20 **development project satisfies the purposes and provisions of**
 21 **IC 8-1-33, the authority may by resolution approve the proposed**
 22 **financing agreement. The resolution may also authorize the**
 23 **issuance of bonds payable solely from revenues and receipts**
 24 **derived from the financing agreement or as otherwise provided**
 25 **under the resolution. The bonds are not in any respect a general**
 26 **obligation of the state, nor are they payable in any manner from**
 27 **revenues raised by taxation.**

28 SECTION 7. IC 4-4-11-19 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) The
 30 authority shall have the power to borrow money and to issue its bonds
 31 from time to time in such principal amounts as the authority determines
 32 shall be necessary to provide sufficient funds to carry out its purposes,
 33 including:

- 34 (1) carrying out the powers stated in this chapter, except the
- 35 powers pertaining to the guaranty program, and in IC 15-7-5-16
- 36 through IC 15-7-5-20;
- 37 (2) the payment of interest on bonds of the authority;
- 38 (3) the establishment of reserves to secure the bonds; and
- 39 (4) all other expenditures of the authority incident to, necessary,
- 40 and convenient to carry out its purposes and powers.

41 (b) The authority may also issue bonds in the manner provided by
 42 IC 4-4-21 and IC 15-7-5.

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(c) The authority may also issue bonds and notes under this chapter to make loans to the broadband development authority as provided by IC 8-1-33.

SECTION 8. IC 4-4-11-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20.5. (a) The authority, to carry out the purposes and policies of this article and IC 8-1-33, may purchase notes of the broadband development authority, and the broadband development authority may sell its notes to the authority upon the terms and conditions set forth in a resolution of the board of directors of the broadband development authority.

(b) The authority, for the purpose described in subsection (a), may:

(1) issue the authority's bonds and notes payable solely from the revenues or funds available to the authority for such payment; and

(2) otherwise assist the broadband development authority as provided in this article.

(c) The broadband development authority may contract with the authority with respect to the loan or purchase of the broadband authority's notes. A contract entered into under this subsection must contain the terms and conditions of the loan or purchase and may be in any form agreed to by the authority and the broadband development authority, including a customary form of resolution. The broadband development authority may pay fees and charges required to be paid to the authority for the authority's services.

(d) Notwithstanding any statute applicable to or constituting any limitation on the sale of bonds or notes or on entry into an agreement, the broadband development authority may sell its notes to the authority, without limitation as to denomination, at a private sale at the price or prices and in the manner determined by the authority and the broadband development authority.

SECTION 9. IC 4-4-11-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 35. All expenses incurred by the authority in carrying out this chapter, IC 4-4-21, IC 8-1-33, or IC 15-7-5 shall be payable solely from funds provided under this chapter, IC 4-4-21, IC 8-1-33, or IC 15-7-5 and nothing in this chapter shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of it.

SECTION 10. IC 4-12.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON

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PASSAGE]:

ARTICLE 12.5 INDIANA FINANCE AUTHORITY

Chapter 1. Legislative Finding of Fact and Public Purpose

Sec. 1. The general assembly makes the following findings of fact:

(1) There are currently numerous bodies corporate and politic of the state that may issue bonds, notes, obligations, and otherwise access the financial markets.

(2) The multiplicity of these entities creates management inefficiencies.

(3) The existence of these separate entities, with separate decision making and borrowing authority, imposes additional costs on the inhabitants of Indiana.

(4) Consolidation of this decision making and borrowing authority provides economic efficiencies and management synergies as duplicative costs and functions are eliminated.

(5) Consolidation of decision making and borrowing authority will enable the state to communicate, with a single voice, with the various participants in the financial markets, including credit rating agencies, investment bankers, investors, and municipal bond insurers and other credit enhancers.

(6) Consolidating the decision making and borrowing authority without abolishing these entities is desirable as it will not require significant steps to provide for the transfer or succession of the powers of these entities.

(7) It is desirable to consolidate the decision making and borrowing authority at this time.

(8) It is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.

(9) Consolidation of decision making and borrowing authority as provided by this article serves a public purpose and addresses a unique challenge facing the state because of the findings in this section.

Sec. 2. This article is necessary for the welfare of the state and its inhabitants and shall be liberally construed to effect the purposes of this article.

Sec. 3. To the extent that the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling and supersede all other laws.

Chapter 2. Definitions

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1 Sec. 1. The definitions in this chapter apply throughout this
2 article.

3 Sec. 2. "Authority" refers to the Indiana finance authority
4 established by IC 4-12.5-3-1.

5 Sec. 3. "Board" refers to the authority's board of directors
6 established by IC 4-12.5-3-2.

7 Sec. 4. "Bond" refers to a bond issued under:

8 (1) this article; or

9 (2) any other statute under which an entity is authorized to
10 issue bonds.

11 Sec. 5. "Broadband development program" refers to the
12 broadband development program established by IC 8-1-33-11.

13 Sec. 6. "Controlled entity" refers to a financing entity for which
14 the board acts as the governing body.

15 Sec. 7. "Entity" refers to:

16 (1) a financing entity; or

17 (2) an operating entity.

18 Sec. 8. "Executive director" refers to the executive director,
19 secretary-manager, or other person serving the chief
20 administrative function of a financing entity under a statute
21 establishing that financing entity.

22 Sec. 9. "Financing entity" means:

23 (1) the Indiana development finance authority created by
24 IC 4-4-11-4;

25 (2) the Indiana educational facilities authority created by
26 IC 20-12-63-4;

27 (3) the Indiana health facility financing authority created by
28 IC 5-1-16-2;

29 (4) the Indiana housing finance authority created by
30 IC 5-20-1-3;

31 (5) the recreational development commission created by
32 IC 14-14-1-7;

33 (6) the state office building commission established by
34 IC 4-13.5-1-1.5; and

35 (7) the Indiana transportation finance authority established
36 by IC 8-9.5-8-2.

37 Sec. 10. "Governing body" refers to the:

38 (1) members; or

39 (2) board of directors;

40 of a financing entity as provided for in the statute creating or
41 establishing that financing entity.

42 Sec. 11. "Note" refers to a note, loan contract, lease, or other

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evidence of indebtedness issued or entered into under:

- (1) this article; or
- (2) any other statute under which an entity is authorized to issue or enter into notes, loan contracts, leases, or other evidences of indebtedness.

Sec. 12. "Operating entity" means:

- (1) the Indiana broadband development authority established by IC 8-1-33-12;
- (2) the Indiana economic development corporation established by IC 5-28-3-1;
- (3) the Indiana port commission created by IC 8-10-1-3;
- (4) the state fair commission established by IC 15-1.5-2-1;
- (5) the intelenet commission established by IC 5-21-2-1; and
- (6) the Indiana White River state park development commission created by IC 14-13-1-5.

Sec. 13. "State revolving fund program" refers to:

- (1) the wastewater revolving loan program established by IC 13-18-13; and
- (2) the drinking water revolving loan program established by IC 13-18-21.

Chapter 3. Establishment and Organization

Sec. 1. (a) The Indiana finance authority is established as a separate body corporate and politic, constituting an instrumentality of the state, but not a state agency, for the public purposes set forth in this article. The authority is separate and apart from the state in its corporate and sovereign capacity, and though separate from the state, the exercise by the authority of its powers constitutes an essential governmental, public, and corporate function.

(b) The authority is established for the purpose of permitting the consolidation in a single body of decision making concerning access to the capital and financial markets in the name of, or for the benefit of, the state.

Sec. 2. (a) The authority is governed by a board of directors consisting of the following five (5) members:

- (1) The governor, or the governor's designee.
- (2) The budget director appointed under IC 4-12-1-3, or the budget director's designee, who shall serve as chairperson.
- (3) Three (3) members appointed by the governor, who must be residents of Indiana.

(b) If a member appointed under subsection (a)(3) is a state employee or officer, the member may designate one (1) or more

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subordinates to serve in place of the member. A designation must be made in writing and provide for a term for which the designation is made.

(c) Appointments to the board under subsection (a)(3) are for terms of four (4) years. A member appointed to the board under subsection (a)(3):

- (1) holds office for the term of the appointment;
- (2) continues to serve after expiration of the appointment until a successor is appointed and qualified;
- (3) is eligible for reappointment; and
- (4) serves at the pleasure of the governor.

(d) The governor shall fill a vacancy for the unexpired term of any member appointed under subsection (a)(3).

(e) Members are entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with their duties as provided by law. Members are not entitled to the salary per diem provided by IC 4-10-11-2.1(b) or any other compensation while performing their duties.

Sec. 3. (a) The board shall annually elect a member of the board as the vice chairperson of the board.

(b) The governor shall appoint the president of the authority, who shall serve as the chief administrative officer of the authority.

(c) The board shall fix the compensation of the president and, upon the recommendation of the president, fix the compensation of other employees of the authority.

Sec. 4. (a) The powers of the authority are vested in the board.

(b) Three (3) members of the board constitute a quorum. The affirmative votes of at least three (3) members are necessary for any action to be taken by the authority.

(c) A vacancy in the membership of the board does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

Sec. 5. (a) The board shall:

- (1) without complying with IC 4-22-2, adopt a policy establishing a code of ethics for the authority and the controlled entities; or
- (2) decide that the authority and the controlled entities shall be under the jurisdiction and rules adopted by the state ethics commission.

(b) Any action of the board taken under this section must be:

- (1) introduced at one (1) meeting of the board and approved at a subsequent meeting of the board; and

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(2) approved by the governor.

Sec. 6. (a) Notwithstanding any other law, a meeting (as defined in IC 5-14-1.5-2) of the board may be held at the call of the chairperson or two (2) members, with notice given in accordance with IC 5-14-1.5-3.

(b) The board may include in its bylaws provisions for the giving of notices to members of the board.

Sec. 7. (a) Each member of the board, before beginning the member's duties, shall execute a surety bond in the penal sum of twenty-five thousand dollars (\$25,000). To the extent any member of the board is already covered by a bond required by state law, the member need not obtain another bond so long as the bond required by state law is in at least the penal sum specified in this section and covers the member's activities for the authority.

(b) Instead of a surety bond, the chairperson of the board may execute a blanket surety bond covering each member and the employees or other officers of the authority. Each surety bond must be conditioned upon the faithful performance of the duties of the office of the member and must be issued by a surety company authorized to transact business in this state as surety. At all times after the issuance of any surety bonds, each member shall maintain the surety bonds in full force and effect. All costs of the surety bonds shall be borne by the authority.

(c) The president of the authority, before beginning the president's duties, must:

- (1) execute a surety bond as provided in subsection (a); or
- (2) be included in the coverage of the blanket surety bond described in subsection (b).

Sec. 8. Neither a board member, the president, nor any other person executing bonds or notes issued under:

- (1) this article; or
- (2) any other statute;

is personally liable on the bonds or notes.

Sec. 9. (a) As used in this section, "person" means:

- (1) a member of the board;
- (2) the president of the authority; and
- (3) an employee of the authority or an entity.

(b) Notwithstanding any other law, including IC 35-44-1-3, a person does not violate any law, civil or criminal, if the person:

- (1) has, or to the person's knowledge, may have or may later acquire a pecuniary interest in a contract with the authority or an entity; or

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(2) is an officer, a member, a manager, a director, or an employee of, or has an ownership interest in, any firm, limited liability company, partnership, corporation, or other organization that is or may be a party to a contract with the authority or an entity;

if the person discloses in writing to the authority the nature and extent of the person's interest as soon as the person has knowledge of the interest and abstains from discussion, deliberation, action, and voting with respect to the contract.

(c) Notwithstanding any other law, a person has a pecuniary interest in a contract with the authority or an entity if the contract will result or is intended to result in an ascertainable increase in the income or net worth of the person of more than five percent (5%).

(d) Notwithstanding any provision of this article or any other law, a contract or transaction is not void, voidable, invalid, or unenforceable because of the existence of a pecuniary interest described in subsection (b) if the provisions of subsection (b) have been satisfied.

Sec. 10. The signature of:

- (1) a board member; or
- (2) the president;

on the bonds or notes may be a facsimile, and the facsimile on the bonds or notes is considered the equivalent of and constitutes the written signature of each of those persons for all purposes, including the full satisfaction of any signature requirements of statutes concerning negotiable bonds or notes.

Sec. 11. (a) The president appointed under section 3(b) of this chapter shall:

- (1) administer and manage the authority; and
- (2) direct the employees of the authority.

(b) The president shall approve all amounts for allowable expenses of the authority or of any employee or consultant of the authority, and expenses incidental to the operation of the authority.

(c) The president shall attend the meetings of the board, keep a record of the proceedings of the board, and maintain all books, documents, and papers filed with the authority, the minutes of the board, and the authority's official seal.

(d) The president may cause copies to be made of all minutes and other records and documents of the authority, and may give certificates under seal of the authority to the effect that those copies are true copies, and all persons dealing with the authority

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1 may rely upon those certificates.

2 **Chapter 4. Powers and Duties**

3 **Sec. 1. (a) The authority has all powers necessary, convenient,**
 4 **appropriate, or desirable to carry out and effectuate the**
 5 **authority's public, governmental, and corporate purposes set forth**
 6 **in this article, even though not specifically granted by statute,**
 7 **including the power to:**

8 (1) have a perpetual existence as a separate body corporate
 9 and politic, and an independent instrumentality, but not a
 10 state agency, exercising essential governmental, public, and
 11 corporate functions;

12 (2) sue and be sued;

13 (3) adopt and alter an official seal;

14 (4) subject to section 4 of this chapter, and without complying
 15 with IC 4-22-2, make and enforce bylaws, rules, and policies:

16 (A) for the conduct of the authority's business; and

17 (B) in connection with the performance of the authority's
 18 functions and duties, including the creation of a debt
 19 issuance and management plan;

20 (5) acquire, hold, use, and dispose of the authority's income,
 21 revenues, funds, and money;

22 (6) acquire, rent, lease, hold, use, and dispose of property for
 23 the authority's purposes;

24 (7) make contracts and incur liabilities;

25 (8) borrow money;

26 (9) issue the authority's negotiable bonds or notes, subject to
 27 provisions for registration of negotiable bonds and notes,
 28 provide for and secure their payment, provide for the rights
 29 of their holders, and purchase, hold, and dispose of any of the
 30 authority's bonds or notes;

31 (10) fix and revise from time to time, and charge and collect,
 32 fees and charges for the use of the authority's services or
 33 facilities;

34 (11) accept gifts or grants of property, funds, money,
 35 materials, labor, supplies, or services from the United States,
 36 any governmental unit, or any person, carry out the terms or
 37 provisions or make agreements with respect to the gifts or
 38 grants, and do all things necessary, useful, desirable, or
 39 convenient in connection with procuring, accepting, or
 40 disposing of the gifts or grants;

41 (12) do anything authorized by this article, through the
 42 authority's officers, agents, or employees or by contracts with

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a person;

(13) procure insurance against any losses in connection with the authority's property, operations, or assets in amounts and from insurers as the authority considers desirable;

(14) cooperate with and exchange services, personnel, and information with any federal, state, or local government office, officer, or agency;

(15) employ fiscal consultants, engineers, bond counsel, other special counsel and other consultants, employees, and agents as required in the judgment of the authority, and fix and pay their compensation from funds available to the authority;

(16) make, execute, and effectuate contracts, agreements, or other documents with any governmental agency or any person, corporation, limited liability company, association, partnership, firm, or other organization or entity necessary or convenient to accomplish the purposes of this article;

(17) exercise the powers and perform the duties of a controlled entity; and

(18) develop debt issuance and management policies without complying with IC 4-22-2.

(b) The omission of a power from the list in subsection (a) does not imply that the authority lacks that power.

(c) The rule of law that a separate body corporate and politic has only:

(1) powers expressly granted by statute;

(2) powers necessarily or fairly implied in or incident to powers expressly granted; and

(3) powers indispensable to the declared purposes of the unit; is abrogated with respect to the authority and each entity.

(d) The authority and each entity may exercise any power to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by statute and is consistent with the purposes of this article.

Sec. 2. The authority may:

(1) make, enter into, and enforce all contracts necessary, convenient, or desirable for the purposes of the authority or pertaining to:

(A) a purchase, acquisition, or sale of securities or other investments; or

(B) the performance of the authority's duties and execution of any of the authority's powers under this article;

(2) purchase, acquire, or hold securities or other investments

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for the authority's own account at prices and in a manner the authority considers advisable, and sell or otherwise dispose of those securities or investments at prices without relation to cost and in a manner the authority considers advisable;

(3) fix and establish terms and provisions with respect to:

(A) a purchase of securities by the authority, including dates and maturities of the securities;

(B) redemption or payment before maturity; and

(C) any other matters that in connection with the purchase are necessary, desirable, or advisable in the judgment of the authority; and

(4) to the extent permitted under the authority's contracts with the holders of bonds or notes, amend, modify, and supplement any provision or term of:

(A) a bond, note, or any other obligation of the authority; or

(B) any agreement or contract of any kind to which the authority is a party.

Sec. 3. (a) The board may adopt a resolution delegating any of the board's powers and duties to:

(1) a board member;

(2) the president; or

(3) an employee;

of the authority.

(b) A resolution adopted under this section must specify the nature of the delegation and include reasonable standards for the delegation.

Sec. 4. The authority, without complying with IC 4-22-2, may make and enforce bylaws, rules, and policies for the conduct of the authority's business and in connection with performance of the authority's functions and duties. These rules, bylaws, and policies must be made by a resolution of the board introduced at one (1) meeting and approved at a subsequent meeting of the board.

Sec. 5. The authority may issue bonds or notes and lend the proceeds of those bonds or notes for:

(1) any purpose for which a controlled entity may issue bonds or notes and lend the proceeds of bonds or notes; and

(2) the purposes of the state revolving fund program.

Sec. 6. (a) The authority may invest:

(1) the authority's money, funds, and accounts; and

(2) any money, funds, and accounts in the authority's custody; as provided in a resolution of the board.

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1 (b) Proceeds of bonds or notes may be invested as provided in
2 a resolution of the authority or in a trust agreement entered into by
3 the authority.

4 (c) The authority and each entity are not subject to the
5 provisions of IC 5-13.

6 (d) The authority and each entity may enter into swap
7 agreements (as defined in IC 8-9.5-9-4) in accordance with
8 IC 8-9.5-9-5 and IC 8-9.5-9-7.

9 Sec. 7. The authority may not:

10 (1) deal in securities within the meaning of or subject to any
11 securities law, securities exchange law, or securities dealers
12 law of the United States of America or of the state or of any
13 other state or jurisdiction, domestic or foreign, except as
14 authorized in this article;

15 (2) emit bills of credit, or accept deposits of money for time or
16 demand deposit, or administer trusts, or engage in any form
17 or manner, or in the conduct of, any private or commercial
18 banking business, or act as a savings bank or savings
19 association, or any other kind of financial institution; or

20 (3) engage in any form of private or commercial banking
21 business.

22 Sec. 8. (a) If the authority or any controlled entity:

23 (1) issues bonds or notes; and

24 (2) receives loan payments made by and made to a political
25 subdivision (as defined in IC 13-11-2-164(a) and
26 IC 13-11-2-164(b));

27 the authority or the controlled entity may, by the resolution
28 approving the bonds or notes, provide that subsection (b) is
29 applicable to the political subdivision.

30 (b) Notwithstanding any other law, to the extent that any
31 department or agency of the state, including the treasurer of state,
32 is the custodian of money payable to the political subdivision (other
33 than for goods or services provided by the political subdivision), at
34 any time after written notice to the department or agency head
35 from the authority or the controlled entity that the political
36 subdivision is in default on the payment of principal or interest on
37 the obligations then held or owned by or arising from an
38 agreement with the authority or the controlled entity, the
39 department or agency shall withhold the payment of that money
40 from that political subdivision and pay over the money to the
41 authority or the controlled entity for the purpose of paying
42 principal of and interest on bonds or notes of the authority or the

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controlled entity. However, the withholding of payment from the political subdivision and payment to the authority or the controlled entity under this section must not adversely affect the validity of the obligation in default.

Chapter 5. Issuance of Bonds or Notes by the Authority

Sec. 1. The authority may issue bonds or notes in principal amounts that the authority considers necessary to provide funds for any purposes under this article, including:

- (1) the payment, funding, or refunding of the principal of, or interest or redemption premiums on, bonds or notes issued by the authority, whether the bonds or notes or interest to be paid, funded, or refunded have or have not become due; and
- (2) the establishment or increase of reserves to secure or to pay:

(A) the authority's bonds or notes, or interest on bonds or notes; and

(B) all other costs or expenses of the authority incident to and necessary or convenient to carry out the authority's corporate purposes and powers.

Sec. 2. (a) A bond or note of the authority:

- (1) is not a debt, liability, loan of the credit, or pledge of the faith and credit of the state;
- (2) is payable solely from the money pledged or available for its payment under this article; and
- (3) must contain on its face a statement that the authority is obligated to pay principal and interest, and redemption premiums, if any, solely from the money pledged or available for its payment and that the faith, credit, and taxing power of the state are not pledged to the payment of the bond or note.

(b) The state pledges to and agrees with the holders of the bonds or notes issued by the authority that the state will not:

- (1) limit or restrict the rights vested in the authority to fulfill the terms of any agreement made with the holders of the bonds or notes; or
- (2) in any way impair the rights or remedies of the holders of the bonds or notes;

until the bonds or notes, together with the interest on the bonds or notes, and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met, paid, and discharged.

Sec. 3. The bonds and notes of the authority are negotiable instruments for all purposes of the Uniform Commercial Code

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(IC 26-1), subject only to the provisions of the bonds and notes for registration.

Sec. 4. (a) Bonds or notes of the authority must be authorized by resolution of the board, may be issued in one (1) or more series, and must:

- (1) bear the date;
- (2) mature at the time or times;
- (3) be in the denomination;
- (4) be in the form;
- (5) carry the conversion or registration privileges;
- (6) have the rank or priority;
- (7) be executed in the manner;
- (8) be payable from the sources and in the medium of payment at the place within or outside Indiana; and
- (9) be subject to the terms of redemption;

as provided by the resolution of the board or the trust agreement securing the bonds or notes.

(b) Bonds or notes may be issued by the authority without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in this article.

(c) The rate or rates of interest on the bonds or notes of the authority may be fixed or variable. Variable rates shall be determined in the manner and in accordance with the procedures set forth in the resolution of the board or the trust agreement securing the bonds or notes. The interest on bonds or notes may be payable semiannually or annually or at any other interval or intervals as may be provided in the resolution of the board or the trust agreement securing the bonds or notes, or the interest may be compounded and paid at maturity or at any other times as may be specified in the resolution of the board or the trust agreement securing the bonds or notes.

Sec. 5. Bonds or notes of the authority may be sold at public or private sale at the price and in the manner the board determines.

Sec. 6. (a) In the discretion of the board, any bonds or notes issued by the authority may be secured by a trust agreement by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside Indiana.

(b) The trust agreement or the resolution providing for the issuance of the bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the holders of

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any the bonds or notes as may be reasonable and proper and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual right of action by the holders.

(d) In addition to the provisions of subsections (a), (b), and (c), any trust agreement or resolution may contain other provisions that the board considers reasonable and proper for the security of the holders of any bonds or notes.

(e) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds and notes or from any other funds available to the board.

Sec. 7. The authority may purchase bonds or notes of the authority out of the authority's funds or money available for the purchase of its own bonds and notes. The authority may hold, cancel, or resell the bonds or notes subject to, and in accordance with, agreements with holders of its bonds or notes. Unless canceled, bonds or notes so held are considered to be held for resale or transfer and the obligation evidenced by the bonds or notes is not considered to be extinguished.

Sec. 8. All securities purchased, held, or owned by the authority, upon delivery to the authority, must be accompanied by all documentation required by the board.

Sec. 9. (a) The board may establish and maintain a reserve fund for one (1) or more issues of bonds or notes, in which there shall be deposited or transferred:

(1) money appropriated by the general assembly for the purpose of the fund in accordance with section 10 of this chapter;

(2) proceeds of bonds or notes required to be deposited in the fund by terms of a trust agreement or a resolution of the authority with respect to the proceeds of bonds or notes;

(3) other money appropriated by the general assembly to a reserve fund; and

(4) other money or funds of the authority that the authority decides to deposit in the fund.

(b) Money in a reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds or notes as the interest and principal become due and payable and for the

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retirement of bonds or notes. The money may not be withdrawn if a withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of:

- (1) interest then due and payable on bonds or notes; and
- (2) the principal of bonds or notes then maturing and payable, whether by reason of maturity or mandatory redemption;

for which other money of the authority is not then available. As used in this chapter, "required debt service reserve" means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution or trust agreement.

Sec. 10. To ensure the maintenance of the required debt service reserve in any reserve fund, the general assembly may annually appropriate to the authority for deposit in one (1) or more of the funds the sum, certified by the president of the authority to the general assembly, that is necessary to restore one (1) or more of the funds to an amount equal to the required debt service reserve. The president of the authority annually, before December 1, shall make and deliver to the general assembly a certificate stating the sum required to restore the funds to that amount. Nothing in this section creates a debt or liability of the state, a pledge of the faith and credit of the state, or an obligation to make any appropriation within the meaning of the Constitution of the State of Indiana or Indiana statutes.

Sec. 11. The following are exempt from state taxes as provided by IC 6-8-5:

- (1) Bonds and notes issued under this article or any other statute under which a controlled entity may issue bonds or notes.
- (2) Proceeds received from sale of the bonds or notes by a holder, to the extent of the holder's costs of acquisition.
- (3) Proceeds received on redemption of the bonds or notes before maturity.
- (4) Proceeds received at the maturity of the bonds or notes.
- (5) Interest received on the bonds or notes.

Sec. 12. The bonds and notes issued under the authority of this chapter or any other statute under which a controlled entity may issue bonds or notes are:

- (1) legal investments in which:
 - (A) public officers or public bodies of the state;
 - (B) political subdivisions of the state;
 - (C) municipalities and municipal subdivisions;

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(D) insurance companies and associations and other persons carrying on insurance business;

(E) banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business;

(F) administrators, guardians, executors, trustees, and other fiduciaries; and

(G) all other persons who are authorized to invest in bonds or in other obligations of this state;

may invest funds, including capital, in their control or belonging to them; and

(2) securities that may be deposited with and received by all public officers and bodies of this state or any agency or political subdivisions of this state and all municipalities and public commissions for any purpose for which the deposit of bonds or other obligations of this state is authorized by law.

Sec. 13. All bonds or notes issued under:

(1) this chapter; or

(2) any other statute under which a controlled entity may issue bonds or notes;

are exempt from the registration requirements of IC 23-2-1 and other securities registration statutes.

Chapter 6. Role of Authority With Respect to an Operating Entity

Sec. 1. As used in this chapter, "obligations" means:

(1) bonds;

(2) notes; and

(3) leases, credit enhancement, liquidity facilities, swap agreements, and similar arrangements.

Sec. 2. The board may review and approve the obligations of an operating entity before their execution until an executive order is issued under section 4 of this chapter.

Sec. 3. The following provisions apply to an operating entity until an executive order is issued under section 4 of this chapter:

(1) The operating entity to which the order applies may not issue or execute its obligations without the prior review by and approval of the board.

(2) The authority may manage, direct, negotiate, and supervise all activities concerning the issuance and execution of obligations by the operating entity.

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1 **Sec. 4. (a) The authority may request that the board cease to**
 2 **review and approve the obligations of an operating entity by**
 3 **submitting to the governor:**

4 **(1) a written statement indicating that:**

5 **(A) the authority has reviewed the functions and activities**
 6 **of the operating entity; and**

7 **(B) the authority desires to have the board cease the review**
 8 **and approval of the obligations of the operating entity; and**

9 **(2) a written recommendation that the governor issue an**
 10 **executive order authorizing and directing the board to cease**
 11 **the review and approval of the obligations of the operating**
 12 **entity.**

13 **(b) Upon receipt of the written statement and recommendation**
 14 **described in subsection (a), the governor may issue an executive**
 15 **order consistent with the purposes of this article authorizing and**
 16 **directing the board to cease the review and approval of obligations**
 17 **of the operating entity. An order issued under this subsection must**
 18 **provide a date certain on which the board will cease to review and**
 19 **approve the obligations of the operating entity.**

20 **Chapter 7. Role of Authority With Respect to a Financing**
 21 **Entity**

22 **Sec. 1. The board shall replace and act as the governing body of**
 23 **each financing entity and each financing entity shall constitute a**
 24 **controlled entity until an executive order is issued under section 6**
 25 **of this chapter.**

26 **Sec. 2. When a financing entity is a controlled entity, the board:**

27 **(1) shall replace and act as the governing body of the**
 28 **financing entity;**

29 **(2) has all the powers and authority granted to the governing**
 30 **body of the financing entity; and**

31 **(3) may perform all the duties assigned to the governing body**
 32 **of the financing entity;**

33 **under any statute, order, rule, regulation, or policy.**

34 **Sec. 3. When a financing entity is a controlled entity:**

35 **(1) the governing body of the financing entity as constituted**
 36 **under the statute establishing the financing entity does not**
 37 **possess any powers or authority previously granted to the**
 38 **governing body by any statute, order, rule, regulation, or**
 39 **policy; and**

40 **(2) the powers and authority described in subdivision (1) are**
 41 **granted to the board, acting as the governing body of the**
 42 **financing entity.**

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1 **Sec. 4. When a financing entity is a controlled entity, all statutes**
 2 **relating to the:**

- 3 (1) organization, membership, and officers of;
- 4 (2) quorum requirements for meetings of;
- 5 (3) appointment of an executive director of;
- 6 (4) surety bond requirements for members of;
- 7 (5) adoption of a code of ethics by;
- 8 (6) conflicts of interest of;
- 9 (7) execution of bonds, notes, or documents by;
- 10 (8) management of; and
- 11 (9) governance of;

12 **the financing entity are superseded by the applicable provisions of**
 13 **this article.**

14 **Sec. 5. (a) The authority may restructure the organization,**
 15 **operation, management, and governance of any controlled entity**
 16 **in any manner the authority considers desirable and as will assist**
 17 **the authority in carrying out the authority's purposes under this**
 18 **article.**

19 **(b) The president of the authority may:**

- 20 (1) serve as the executive director of a controlled entity; or
- 21 (2) select an individual to serve as the executive director of the
- 22 controlled entity.

23 **Sec. 6. (a) The authority may request that the board cease to act**
 24 **as the governing body of a controlled entity by submitting to the**
 25 **governor:**

26 **(1) a written statement indicating that:**

- 27 (A) the authority has reviewed the functions and activities
- 28 of the controlled entity; and
- 29 (B) the authority desires to have the board cease to act as
- 30 the governing body of the controlled entity; and

31 **(2) a written recommendation that the governor issue an**
 32 **executive order authorizing and directing the board cease to**
 33 **act as the governing body of the controlled entity.**

34 **(b) Upon receipt of the written statement and recommendation**
 35 **described in subsection (a), the governor may issue an executive**
 36 **order consistent with the purposes of this article authorizing and**
 37 **directing the board to cease acting as the governing body of the**
 38 **financing entity. An order issued under this subsection must**
 39 **provide:**

- 40 (1) a date certain on which the board will cease to act as the
- 41 governing body of the controlled entity and the governing
- 42 body as constituted under the statute establishing the

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financing entity will be reinstated;

(2) for the appointment of the governing body of the financing entity; and

(3) that on the date certain the board no longer possesses the powers and duties of the governing body of the controlled entity and those powers and duties revert to the governing body of the financing entity as constituted under the statute establishing the financing entity.

Sec. 7. (a) All bonds, notes, contracts, and other obligations of a financing entity entered into before the date the financing entity became a controlled entity remain valid and binding obligations of the financing entity and continue in full force and effect in accordance with their respective terms.

(b) All bonds, notes, contracts, and other obligations of a financing entity entered into after a financing entity becomes a controlled entity remain valid and binding obligations of the financing entity and continue in full force and effect in accordance with their respective terms.

(c) The board, in exercising the powers and carrying out the duties of a controlled entity while acting as the governing body of the controlled entity, shall not take any action that would impair any bonds, notes, contracts, or other obligations to which the controlled entity is a party.

Chapter 8. Limitations and Covenants

Sec. 1. (a) An action to contest the validity of bonds or notes issued under this article may not be brought after the fifteenth day following the adoption of the resolution authorizing the sale of the bonds or notes.

(b) An action to contest the validity of the sale of bonds or notes issued under this article may be brought after the fifth day following the sale.

(c) If an action challenging bonds or notes is not brought within the time prescribed by subsection (a) or (b), whichever is applicable, the bonds or notes are conclusively presumed to be fully authorized and issued under Indiana law, and a person is estopped from questioning their validity, authorization, sale, issuance, execution, or delivery by the authority.

Sec. 2. The general assembly covenants and agrees with the holders of any bonds or notes issued under this article that as long as any of the bonds or notes are outstanding and unpaid, the state will not in any way impair the rights and remedies of the holders of the bonds or notes until the bonds or notes, together with

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1 interest on the bonds or notes, interest on any unpaid installment
 2 of interest, and all costs and expenses in connection with any action
 3 or proceedings by or on behalf of the holders of the bonds or notes,
 4 are fully paid, met, and discharged.

5 **Sec. 3.** The state hereby pledges to and agrees with the holder of
 6 any bonds or notes that the state will not limit or alter the rights
 7 vested in the authority or an entity to fulfill the terms of any
 8 agreements made with the holders or in any way impair the rights
 9 or remedies of the holders until the bonds or notes, together with
 10 the interest, with interest on any unpaid installments of interest,
 11 and all costs and expenses in connection with any action or
 12 proceeding by or on behalf of the holders, are fully met and
 13 discharged. The authority and each entity are authorized to include
 14 this pledge and agreement of the state in any agreement with the
 15 holders of the bonds or notes.

16 **SECTION 11.** IC 4-13.5-1-2.5 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE UPON PASSAGE]: **Sec. 2.5.** (a) The board of directors
 19 of the Indiana finance authority established by IC 4-12.5-3-2 may,
 20 in accordance with IC 4-12.5-7, act as the members of the
 21 commission established by section 1.5 of this chapter.

22 (b) When the board of directors acts as the members of the
 23 commission in accordance with IC 4-12.5-7, the following
 24 provisions are superseded:

- 25 (1) Section 2 of this chapter.
- 26 (2) Section 3.1 of this chapter.
- 27 (3) Section 5 of this chapter.

28 **SECTION 12.** IC 5-1-16-2.5 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 30 UPON PASSAGE]: **Sec. 2.5.** (a) The board of directors of the
 31 Indiana finance authority established by IC 4-12.5-3-2 may, in
 32 accordance with IC 4-12.5-7, act as the members of the authority
 33 created by section 2 of this chapter.

34 (b) When the board of directors acts as the members of the
 35 authority, in accordance with IC 4-12.5-7, the following provisions
 36 are superseded:

- 37 (1) Section 3 of this chapter.
- 38 (2) Section 4 of this chapter.
- 39 (3) Section 5 of this chapter.
- 40 (4) Section 6 of this chapter.
- 41 (5) Section 7 of this chapter.
- 42 (6) Section 8 of this chapter.

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(7) Section 10 of this chapter.

(8) Section 12 of this chapter.

(9) Section 13.1 of this chapter.

SECTION 13. IC 5-20-1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. (a) The board of directors of the Indiana finance authority established by IC 4-12.5-3-2 may, in accordance with IC 4-12.5-7, act as the members of the authority created by section 3 of this chapter.**

(b) When the board of directors acts as the members of the authority, in accordance with IC 4-12.5-7, the following provisions are superseded:

(1) Section 3 of this chapter.

(2) Section 4.1 of this chapter.

SECTION 14. IC 5-21-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. In addition to the requirements set forth in this chapter, review and approval by the Indiana finance authority of the issuance of obligations (as defined in IC 4-12.5-6-1) by the intelenet commission created by IC 5-21-2-1 may be required under IC 4-12.5-6.**

SECTION 15. IC 5-28-27 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 27. Responsibility of the Indiana Finance Authority

Sec. 1. As used in this chapter, "obligations" has the meaning set forth in IC 4-12.5-6-1.

Sec. 2. In addition to any other requirements established by this article for the issuance of obligations by the corporation, review and approval by the Indiana finance authority of the issuance of obligations by the corporation under this article may be required under IC 4-12.5-6.

SECTION 16. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 33. Indiana Broadband Development Program

Sec. 1. (a) The general assembly finds that:

(1) certain areas of Indiana are not being adequately served with broadband services;

(2) for the benefit of the people of Indiana and the improvement of their health, welfare, and living conditions, the improvement of the economic and educational welfare of

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Indiana, and the improvement of its public safety and security, it is essential that broadband infrastructure be expanded to provide broadband services throughout Indiana; (3) the private sector should be encouraged to invest in the deployment of broadband services and networks and that financing by this authority will encourage broadband investment;

(4) economic, technological, and logistical integrated broadband services should be provided throughout Indiana on a nondiscriminatory basis;

(5) the provision of affordable broadband services and networks will:

(A) ensure the long term growth of and the enhancement and delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities within Indiana; and

(B) benefit residential, commercial, public, governmental, and nonprofit entities within Indiana; and

(6) the authority created and powers conferred by this chapter constitute a necessary program and serve a necessary public purpose.

(b) To increase the speed and availability at which affordable broadband services become available in Indiana, it is declared to be a valid public purpose to assist in the financing and refinancing of the development of a statewide broadband infrastructure.

(c) It is further declared to be a valid public purpose for the development finance authority to issue bonds and notes, and loan the proceeds of those bonds and notes to the authority, so that the authority may:

(1) provide for financing or refinancing to broadband developers and broadband operators;

(2) make loans and provide joint venture and partnership arrangements to broadband developers and broadband operators;

(3) enter into contracts for the lease or management of all or part of the broadband infrastructure; and

(4) enter into joint venture and partnership arrangements and partnerships with persons that will acquire, construct, develop, create, maintain, own, and operate all or part of the broadband infrastructure.

Sec. 2. As used in this chapter, "authority" refers to the Indiana broadband development authority established by section 12 of this

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1 chapter.

2 Sec. 3. As used in this chapter, "broadband developer" means
3 a person selected by the authority to acquire, construct, develop,
4 and create any part of the broadband infrastructure.

5 Sec. 4. As used in this chapter, "broadband development
6 program" refers to the Indiana broadband development program
7 established by section 11 of this chapter.

8 Sec. 5. As used in this chapter, "broadband infrastructure"
9 includes all facilities, hardware, and software and other intellectual
10 property necessary to provide broadband services in Indiana,
11 including voice, video, and data.

12 Sec. 6. As used in this chapter, "broadband operator" means a
13 person selected by the authority to operate any part of the
14 broadband infrastructure.

15 Sec. 7. As used in this chapter, "broadband services" includes
16 services, including voice, video, and data, that provide capacity for
17 transmission of more than two hundred (200) kilobits per second
18 in at least one (1) direction regardless of the technology or medium
19 used, including wireless, copper wire, fiber optic cable, or coaxial
20 cable. If voice transmission capacity is offered in conjunction with
21 other services using transmission of more than two hundred (200)
22 kilobits per second, the voice transmission capacity may be less
23 than two hundred (200) kilobits per second.

24 Sec. 8. As used in this chapter, "development costs" means the
25 costs associated with the broadband infrastructure that have been
26 approved by the authority and includes all the following:

- 27 (1) The costs for the planning, acquiring, leasing,
28 constructing, maintaining, and operating of the broadband
29 infrastructure.
- 30 (2) Payments for options to purchase, deposits on contracts of
31 purchase, and payments for the purchases of properties for
32 the broadband infrastructure.
- 33 (3) Financing, refinancing, acquisition, demolition,
34 construction, rehabilitation, and site development of new and
35 existing buildings.
- 36 (4) Carrying charges during construction.
- 37 (5) Purchases of hardware, software, facilities, or other
38 expenses related to the broadband infrastructure.
- 39 (6) Legal, organizational, and marketing expenses, project
40 manager and clerical staff salaries, office rent, and other
41 incidental expenses.
- 42 (7) Payment of fees for preliminary feasibility studies and

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advances for planning, engineering, and architectural work.
 (8) Any other costs and expenses necessary for the acquisition,
 construction, maintenance, and operation of all or part of the
 broadband infrastructure.

Sec. 9. As used in this chapter, "development finance authority"
 refers to the Indiana development finance authority established by
 IC 4-4-11-4.

Sec. 10. As used in this chapter, "person" means an individual,
 a corporation, a limited or general partnership, a joint venture, a
 limited liability company, or a governmental entity, including a
 body corporate and politic, political subdivision, municipal
 corporation, school, college, university, hospital, health care
 facility, library, or nonprofit organization. The term does not
 include the state.

Sec. 11. The Indiana broadband development program is
 established in order to encourage the provision of affordable
 broadband services and networks that will:

- (1) ensure the long term growth of and the enhancement and
 delivery of services by the business, educational, medical,
 commercial, nonprofit, and governmental entities in Indiana;
 and
- (2) benefit residential, commercial, public, governmental, and
 nonprofit entities in Indiana.

Sec. 12. (a) The Indiana broadband development authority is
 established as a separate body corporate and politic, constituting
 an instrumentality of the state, but not a state agency, for the
 public purposes set forth in this article. The authority is separate
 and apart from the state in its corporate and sovereign capacity,
 and though separate from the state, the exercise by the authority
 of its powers constitutes an essential governmental, public, and
 corporate function.

(b) The authority is governed by a board of directors consisting
 of the following five (5) members:

- (1) The budget director appointed under IC 4-12-1-3, or the
 budget director's designee.
- (2) Four (4) members appointed by the governor, who must be
 residents of Indiana.

(c) If a member appointed under subsection (b)(2) is a state
 employee or officer, the member may designate one (1) or more
 subordinates to serve in place of the member. A designation must
 be made in writing and provide for a term for which the
 designation is made.

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(d) Appointments to the board under subsection (b)(2) are for terms of two (2) years. A member appointed to the board under subsection (b)(2):

- (1) holds office for the term of the appointment;
- (2) continues to serve after expiration of the appointment until a successor is appointed and qualified;
- (3) is eligible for reappointment; and
- (4) serves at the pleasure of the governor.

(e) The governor shall fill a vacancy for the unexpired term of any member appointed under subsection (b)(2).

(f) Members are entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with their duties as provided by law. Members are not entitled to the salary per diem provided by IC 4-10-11-2.1(b) or any other compensation while performing their duties.

(g) The authority exists for the purposes of developing, implementing, and operating the broadband development program.

Sec. 13. (a) Each year the board shall elect from its members:

- (1) a chairperson;
- (2) a vice chairperson; and
- (3) any other officers the board considers necessary.

(b) The governor shall appoint the executive director of the authority, who shall serve as the chief administrative officer of the authority.

Sec. 14. The exercise by the authority of its powers under this chapter constitutes an essential public and governmental function.

Sec. 15. The authority may do the following:

- (1) Request the development finance authority to issue bonds or notes and loan the proceeds to the authority to provide funds to enable the authority to participate in financing and refinancing the expansion of broadband infrastructure services to residential, commercial, public, governmental, and nonprofit customers in Indiana to enhance the delivery of services by the business, educational, medical, commercial, nonprofit, and governmental entities in Indiana.
- (2) Request the development finance authority to issue bonds or notes and loan the proceeds to the authority to enable the making of loans to, and joint venture and partnership arrangements with, broadband developers and broadband operators.
- (3) Authorize the imposition and collection of rents, charges,

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and fees for the services furnished by the broadband infrastructure in conjunction with financing entered into by the authority.

(4) Enter into joint venture and partnership arrangements and partnerships to acquire, construct, maintain, and operate the broadband infrastructure.

(5) Assist broadband developers and operators with all other matters necessary for the acquisition, construction, maintenance, and operation of the broadband infrastructure.

(6) Continuously evaluate all types of technologies to encourage the widest deployment of broadband services and broadband infrastructure in Indiana.

(7) Make broadband services to schools and libraries a priority under authority financing programs.

(8) Ensure that the financing and refinancing of the development of broadband services under this chapter includes provisions ensuring that small businesses and each region of Indiana will have an equal opportunity to receive financing and refinancing.

Sec. 16. (a) The powers of the authority under this chapter include all those necessary to carry out and effectuate the purposes of this chapter, including the following:

(1) To borrow money from the development finance authority for the purposes described in section 15(1) and 15(2) of this chapter.

(2) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(3) To enter into joint venture and partnership arrangements with persons that will acquire, construct, develop, maintain, and operate all or part of the broadband infrastructure.

(4) To receive and distribute state or local funding, including grants, loans, and appropriations.

(5) To make loans and to enter into any joint venture and partnership arrangements with broadband developers and broadband operators that will acquire, construct, maintain, and operate all or part of the broadband infrastructure.

(6) To provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband customers, in conjunction with broadband infrastructure financed by the authority.

(7) To impose and collect charges, fees, or rentals for the

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services furnished by those parts of the broadband infrastructure financed by the authority under this chapter.

(8) To set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards.

(9) To acquire from any person interests in real or personal property necessary for the operation of the authority.

(10) To procure insurance against any loss in connection with the broadband infrastructure and any other property, assets, or activities of the authority.

(11) To sue and be sued, to have a seal, and to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of the authority's powers.

(12) To enforce financial, operational, warranty, security, lease, and guaranty terms and conditions established under financings by the authority. The authority may under this subdivision acquire, construct, develop, lease, create, and maintain all or parts of the broadband infrastructure and acquire from any person interests in real and personal property.

(13) To investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of Indiana and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in Indiana to maximize the interconnectivity and efficiencies of the broadband infrastructure.

(b) As part of an application for financing under this chapter, a broadband developer or broadband operator must file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public with respect to the availability of broadband services. The authority may not approve an application unless a plan is submitted under this subsection.

Sec. 17. The development finance authority may exercise any of its powers to assist the authority in the accomplishment of the purposes of this chapter, including the power to borrow money, issue bonds and notes, and loan the proceeds to the authority to permit the authority to:

(1) finance or refinance part or all of the development costs of the broadband infrastructure; and

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- (2) refinance existing debt for technology that constitutes part of or is related to the broadband infrastructure;
- (3) lease, construct, maintain, and operate the broadband infrastructure;
- (4) make loans to persons for development costs;
- (5) make loans to enable persons to make purchases related to the broadband infrastructure;
- (6) make loans to persons to refinance existing debt incurred by persons in connection with the acquisition or development of technology that constitutes a part of or is related to the broadband infrastructure; and
- (7) make other expenditures necessary to carry out the authority's duties under this chapter, including the payment of the authority's operating expenses.

Sec. 18. (a) The authority may negotiate one (1) or more loans from the development finance authority upon any terms and conditions the board considers appropriate, necessary, or desirable to carry out the purposes of this chapter.

(b) A loan under this section must be evidenced by a note of the authority, executed by the chairperson and attested to by the executive director.

Sec. 19. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments, direct or indirect, of the state or a political subdivision of the state. All notes and bonds issued under this chapter are issued by a body corporate and politic of the state, but not a state agency, and for an essential public and governmental purpose, and the notes and bonds, the interest thereon, the proceeds received by the holder from the sale of the notes and bonds to the extent of the holder's cost of acquisition proceeds received upon redemption before maturity, and proceeds received at maturity and the receipt of the interest and proceeds are exempt from taxation in the state for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

SECTION 17. IC 8-9.5-8-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) The board of directors of the Indiana finance authority established by IC 4-12.5-3-2 may, in accordance with IC 4-12.5-7, act as the members of the authority created by section 2 of this chapter.

(b) When the board of directors acts as the members of the

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authority, in accordance with IC 4-12.5-7, the following provisions are superseded:

(1) Section 3 of this chapter.

(2) Section 4.1 of this chapter.

SECTION 18. IC 8-10-1-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 13.5. In addition to the requirements set forth in this chapter, review and approval by the Indiana finance authority of the issuance of obligations (as defined in IC 4-12.5-6-1) by the commission created by section 3 of this chapter may be required under IC 4-12.5-6.**

SECTION 19. IC 8-10-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. The following provisions apply to this chapter:**

(1) IC 8-10-1-4.

(2) IC 8-10-1-10.

(3) IC 8-10-1-13.

(4) IC 8-10-1-13.5.

~~(4)~~ **(5)** IC 8-10-1-14.

~~(5)~~ **(6)** IC 8-10-1-15.

~~(6)~~ **(7)** IC 8-10-1-16.

~~(7)~~ **(8)** IC 8-10-1-19.

~~(8)~~ **(9)** IC 8-10-1-25.

~~(9)~~ **(10)** IC 8-10-1-27.

~~(10)~~ **(11)** IC 8-10-1-30.

SECTION 20. IC 14-13-1-30.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 30.5. In addition to the requirements set forth in this chapter, review and approval by the Indiana finance authority of the issuance of obligations (as defined in IC 4-12.5-6-1) by the commission created by section 5 of this chapter may be required under IC 4-12.5-6.**

SECTION 21. IC 14-14-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. (a) The board of directors of the Indiana finance authority established by IC 4-12.5-3-2 may, in accordance with IC 4-12.5-7, act as the members of the commission created by section 7 of this chapter.**

(b) When the board of directors acts as the members of the commission, in accordance with IC 4-12.5-7, the following provisions are superseded:

(1) Section 8 of this chapter.

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- (2) Section 9 of this chapter.
- (3) Section 10 of this chapter.
- (4) Section 11 of this chapter.
- (5) Section 12 of this chapter.
- (6) Section 13 of this chapter.
- (7) Section 14 of this chapter.
- (8) Section 15 of this chapter.
- (9) Section 15.5 of this chapter.

SECTION 22. IC 15-1.5-9-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5.** In addition to the requirements set forth in this chapter, review and approval by the Indiana finance authority of the issuance of obligations (as defined in IC 4-12.5-6-1) by the commission created by IC 15-1.5-2-1 may be required under IC 4-12.5-6.

SECTION 23. IC 20-12-63-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5.** (a) The board of directors of the Indiana finance authority established by IC 4-12.5-3-2 may, in accordance with IC 4-12.5-7, act as the members of the authority created by section 4 of this chapter.

(b) When the board of directors acts as the members of the authority, in accordance with IC 4-12.5-7, the following provisions are superseded:

- (1) Section 4 of this chapter.
- (2) Section 5 of this chapter.
- (3) Section 7 of this chapter.
- (4) Section 8 of this chapter.
- (5) Section 9 of this chapter.
- (6) Section 10 of this chapter.
- (7) Section 11.5 of this chapter.
- (8) Section 12 of this chapter.

SECTION 24. [EFFECTIVE UPON PASSAGE] (a) If any provision of this act or the application thereof to any person or circumstances is invalid, the invalidity shall not affect the other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared to be severable in the manner provided by IC 1-1-1-8(b).

(b) If any provision of this act is determined to be unconstitutional, all rights, powers, duties, and obligations revert to the respective holders of those rights, powers, duties, and

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obligations as though this act had never been in effect.

(c) If any provision of this act is determined to be unconstitutional, the governor shall make the appointments necessary to the governing body of any controlled entity as defined in IC 4-12.5-2-6, as added by this act.

SECTION 25. [EFFECTIVE UPON PASSAGE] All bonds, notes, contracts, and obligations issued, executed, or entered into by an entity (as defined in IC 4-12.5-2-10), as added by this act, before the effective date of this act are legalized and validated.

SECTION 26. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 4-12.5-3-2, as added by this act, the board of directors of the authority is considered established when the governor makes the appointments required under IC 4-12.5-3-2, as added by this act.

(b) The governor shall make the initial appointments to the board of directors required under IC 4-12.5-3-2, as added by this act, before June 1, 2005.

(c) Notwithstanding IC 4-12.5-3-2, as added by this act, the term of the initial directors appointed by the governor to the board of directors of the authority ends June 30, 2009.

SECTION 27. An emergency is declared for this act.

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